



Signed and Filed: January 20, 2012

Dennis Montali

DENNIS MONTALI
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re) Bankruptcy Case
AGONAFER SHIFERAW,) No. 11-30696DM
Debtor.) Chapter 11

MEMORANDUM DECISION ON APPLICATION FOR
INTERIM COMPENSATION BY FORMER ATTORNEY FOR DEBTOR

I. Introduction

Before the court is the Final Application For Interim Compensation by Attorney for Debtor ("Application") filed by Debtor's former counsel, Kayla M. Grant, Esq. ("Grant"). Grant seeks allowance of fees for her services in the sum of \$16,900.00, together with expenses of \$1,289.97. Grant seeks to apply a credit in the amount of \$6,139 previously paid to her and seeks interim allowance and payment of the balance of \$12,050.97. Since Grant's services have been terminated by Debtor, the court treats the Application as a final application (see 11 U.S.C. § 330) despite its title.

Debtor, through present counsel, has objected to the Application, requesting that the court defer ruling until the case has been concluded when the court can best determine the net value of Grant's services to the estate.

1 Unfortunately, the court is faced with a series of incomplete
2 or inaccurate representations by an inexperienced attorney,
3 incomplete time keeping, unauthorized disbursements, and, most
4 importantly, a blatant misrepresentation of her client's position
5 in connection with a prior application. While the court will
6 accede to Debtor's request to defer consideration of the fees, it
7 will do so only by imposing on Grant some requirements to improve
8 her fundamental skills and to provide some assurance that her
9 ethical lapses will not be repeated in the future.

10 II. Facts¹

11 As the facts below demonstrate, at the outset of Grant's
12 representation of Debtor she overstated her experience and
13 competence to the court and to the Debtor, while knowing that she
14 was not up to the task of taking on representation of a debtor who
15 was operating a substantial business.

16 Debtor filed this case under chapter 13 on February 24, 2011,
17 represented by other counsel. Approximately three weeks later,
18 Grant filed a notice of substitution of counsel. Thereafter, on
19 March 24, 2011, she filed an Amended Application To Employ Kayla
20 M. Grant, Esq. signed by Debtor, but obviously drafted by Grant.
21 The application states that Debtor selected Grant "for the reason
22 that she has considerable experience in chapter 11
23 reorganizations." The application also recites that Grant was the
24 attorney assigned to four other chapter 11 clients while she was
25 an employee of another attorney. Two of those chapter 11 cases
26 were before this court, McKae (Docket No. 09-33611) and Le Club,

27
28 ¹ The following discussion constitutes the court's findings
of fact and conclusions of law. Fed. R. Bankr. P. 7052(a).

1 LLC (Docket No. 09-33681); the other two cases were Creative Tile
2 & Marble, Inc. (Docket No. 09-71180) and 504 Broadway LLC (Docket
3 No. 09-32638).

4 The application further indicates that "based on [Grant's]
5 experience ... Applicant believes [she] is well qualified to
6 represent its [sic] as debtor in possession in this proceeding."
7 In the next paragraph, the application states that Grant will
8 render services such as "preparing on behalf of [Debtor] as debtor
9 in possession a disclosure statement, a plan of reorganization,
10 and representing [Debtor] at any hearing to approve the disclosure
11 statement and to confirm the plan of reorganization." Debtor
12 states that he needs to employ Grant "because the [Debtor] is not
13 sufficiently familiar with the rights and duties of debtor in
14 possession as to be able to plan and conduct proceedings without
15 the aid of competent counsel."

16 Sadly Grant dramatically overstated both her experience and
17 her competence and ability to perform the enumerated services.
18 First, while the court is unaware of how much time Grant herself
19 worked in the McKae and Le Club cases, the clients in both cases
20 expressed dissatisfaction with their counsel and the Le Club case
21 was converted to chapter 7 prior to confirmation. The debtors in
22 McKae, through new counsel, were able to have their chapter 11
23 case dismissed.

24 A review of the dockets of the other two cases shows that 504
25 Broadway, LLC, was converted to chapter 7 without a plan being
26 confirmed; only Creative Tile, LLC confirmed a plan. The court
27 cannot determine how much Grant herself was involved in the
28 representation of that debtor, but her implication that these four

1 cases equipped her with adequate chapter 11 experience to handle
2 this case is a serious misrepresentation to the Debtor and the
3 court.

4 In responding to the Debtor's objection to her fees, Grant
5 essentially concedes that the recital of her "considerable"
6 experience in chapter 11 reorganizations was inaccurate. Instead,
7 she admits that her "experience with chapter 11's is limited" and
8 that she "never held [herself] out to Debtor as being capable of
9 handling his entire case on [her] own and from the very beginning
10 urged him to seek more experienced counsel to assist him with the
11 problems he was having with Sequoia Mortgage and Trust Deed
12 Investment." See Applicant's Response Debtor's Objection (Docket
13 No. 112, p. 2:6-10).

14 Grant also suggests that she accepted a low retainer because
15 Debtor indicated that he only needed individual chapter 11
16 protection when in fact he was doing business as Rasselas.
17 Regardless of what Debtor originally told Grant, by March 30,
18 2011, when she prepared and filed his Schedules and his chapter 11
19 statement of current monthly income, Grant included the assets and
20 monthly revenues of Rasselas. Grant's statement that she believed
21 Rasselas to be a separate corporate entity is thus inconsistent
22 with documents that she prepared and filed.

23 In the amended application to employ her, Grant recited that
24 Debtor paid her a retainer of \$4,235 "prior to the filing of this
25 Chapter 11 petition in bankruptcy." This also appears to be a
26 misstatement. While the invoices supporting the Application
27 reflect a retainer being paid on March 10, 2011, the payment was
28 made after the commencement of the chapter 13 case but admittedly

1 before conversion to chapter 11. The retainer is reflected in the
2 invoices as \$6,139, an amount that is consistent with the
3 statement pursuant to Rule 2016(b) filed on March 30, 2011 (Docket
4 No. 30): "Retainer \$5,374 + \$765 filing fee = \$6,139." Thus, the
5 amount actually paid to Grant as a retainer exceeds the amount
6 shown in her amended employment application by nearly \$2,000.

7 Finally, Grant initially filed an application for
8 compensation on August 8, 2011, and set it for hearing on August
9 31, 2011. Trust Deed Investments, Inc. and Sequoia Mortgage
10 Capital, Inc. opposed that application on August 26, 2011 (Docket
11 Nos. 86 and 87) based upon their unwillingness to have cash
12 collateral expended for Grant's fees. Grant then amended her
13 application on September 12 (Docket No. 95) and included an
14 electronically signed Declaration Of [Debtor] In Support Of
15 Amended Interim Application For Compensation And Reimbursement Of
16 Expenses.² That declaration recites that Debtor reviewed the
17 amended application and had no objection to it.

18 Subsequently, when Debtor (through new counsel) denied having
19 signed the original of that declaration, Grant was given an
20 opportunity to produce the blue ink original. She did not produce
21 it. She was also given an opportunity to examine Debtor about
22 whether or not he indeed had signed the original in her office, or
23 had indeed indicated the lack of objection to that application.
24 Grant chose none of those options, leading the court to find that
25 Grant had filed a false declaration containing a false signature.
26 Whether the misleading electronic declaration was provided

27
28 ²The signature block on the declaration contains a typeset
"/s/Agonafer Shiferaw."

1 intentionally, or negligently, the court is appalled by such
2 behavior by an officer of the court who held herself out to be
3 experienced in chapter 11 matters.

4 Her conduct was also a direct violation of the court's
5 Electronic Court Filing Procedures that require:

6 **8. Signature and Verified Pleadings:** A Registered Participant
7 who electronically files a document with the Court shall be
8 deemed to have certified under penalty of perjury that he or
9 she has personally reviewed the document,

10 * * *

11 Each electronically filed document shall bear the typed name
12 of the person purporting to have signed the document.

13 * * *

14 A Registered Participant filing a Verified Pleading
15 electronically shall insure that the electronic version
16 conforms to the original, signed pleading/document. Each
17 signature on the original, signed pleading/document shall be
18 indicated on the electronically filed Verified Pleading with
19 the typed name of the person purported to have signed the
20 pleading/document. The electronic filing of a Verified
21 Pleading constitutes a representation by the Registered
22 Participant who files it that the Registered Participant has
23 in his or her possession at the time of filing the fully
24 executed original, signed pleading/document. (Emphasis
25 added.)

26 **9. Retention Requirements:** All originally executed
27 pleadings/documents signed by someone other than the
28 Registered Participant (e.g., Verified Pleadings), which are
subsequently electronically filed with the Court, must be
retained by the Registered Participant for five years after
the case or adversary proceeding has been closed. The CM/ECF
system provides notice of all case closings to Registered
Participants. Upon request of the Court, the Registered
Participant filer must provide to the Court the original,
signed pleadings/documents for review.

29 On August 12, Grant withdrew her amended application and
30 later filed the Application, which came on for hearing on December
31 21, 2011. Grant attempted to minimize the significance of the
misrepresentation of her former client's support for the earlier
application because that application had been withdrawn. In a

1 statement that is remarkable for its boldness and audacity, Grant
2 writes "it perplexes [Grant] as to why a declaration filed in
3 support of a previously withdrawn pleading is being scrutinized at
4 this time." Applicant's Response to Debtor's Objection to Final
5 Application for Compensation and to Judge Docket Order (Docket No.
6 112), p. 3:21-22. It perplexes the court that Grant is so naive.

7 Grant also has disclosed that during the time she was
8 representing Debtor, she billed her client and paid herself from
9 funds held in her trust account on the 25th day of March, April,
10 May, June, July, August and September. Each of these payments was
11 a transfer from Grant's trust account to Grant of property of the
12 estate without prior court authorization of payment of interim
13 compensation under 11 U.S.C. § 331.

14 III. Discussion

15 From the foregoing it is obvious that Grant was not qualified
16 to take on this case and made serious misrepresentations of fact
17 at the outset of her engagement and subsequently when she led the
18 court to believe that her then client had approved of her previous
19 fee application. Grant also lacks sufficient training, knowledge
20 or experience to know when and how she is entitled to be paid for
21 services to be rendered. Notwithstanding that criticism, some of
22 her work has been of value to the Debtor although a large portion
23 of it has not, as recognized by Grant in her Application wherein
24 she has voluntarily eliminated charges for portions of her work in
25 connection with the aborted efforts to promulgate a plan and
26 disclosure statement.

27 Rather than deny her all compensation and order return of the
28 improperly disbursed funds, the court will give Grant an

1 opportunity to educate herself about what is expected of a
2 bankruptcy specialist, and what her ethical responsibilities are.
3 But it will not do so at the present expense of the Debtor.
4 Accordingly, the court will deny all fees sought in the
5 Application other than the amounts impermissibly paid by Grant to
6 herself from her trust account on an interim basis; that denial
7 will be without prejudice to Grant reapplying after she has
8 complied with the court's requirements set forth below. The court
9 will take no action at the present time on Grant's impermissible
10 payments to herself from the trust account and it will defer to a
11 later day whether to allow those payments and to allow any other
12 amounts to be awarded to Grant under 11 U.S.C. § 330.

13 In the meantime, Grant is required, no later than June 30,
14 2012, to attend a recognized Continuing Legal Education program or
15 programs on bankruptcy practice or some other aspect of
16 substantive bankruptcy law consisting of at least sixteen hours of
17 education, and also attend at least two hours of CLE pertaining to
18 ethics and/or professionalism. Grant should file and provide
19 chamber's copy of the CLE certifications of attendance at such
20 programs no later than July 13, 2012.

21 If Grant fails to comply (or obtain an order extending the
22 deadline), counsel for Debtor may file a declaration confirming
23 such failure and upload an order denying the net amount of
24 \$12,050.97, and may move for an order for Grant to disgorge the
25 amounts improperly transferred from her trust account.

26 This Memorandum Decision is being issued too late for Grant
27 to be able to attend Judge Jaroslovsky's presentation on January
28 23, 2012, at 4:00 P.M., in the Santa Rosa Bankruptcy Court

1 entitled "Avoiding Fatal Mistakes In Individual Chapter 11 Cases."
2 If she is able to obtain and watch a DVD of that presentation, the
3 court will accept her certification that she has done so as
4 completion of two hours of the order CLE on bankruptcy matters.

5 IV. Conclusion

6 The court is concurrently issuing an order consistent with
7 this Memorandum Decision.

8 **END OF MEMORANDUM DECISION**
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